

Decision **DRAFT DECISION OF ALJ THOMAS** (Mailed 5/17/2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Joint Application by
AMERICATEL CORPORATION dba 1010 123
AMERICATEL (U 5918 C), and ALMENDRAL,
S.A. for Authority to Transfer Control of an
Authorized Telecommunications Carrier.

Application 05-01-030
(Filed January 28, 2005)

OPINION DENYING PETITION FOR MODIFICATION**I. Summary**

This order denies the Petition for Modification of Decision (D.) 05-03-033 filed by Americatel Corporation (Americatel) and Almendral, S.A. (Almendral) (Petitioners). Petitioners seek removal of the requirement in that decision that they have on deposit in a United States bank at least \$25,000. They claim that because they have assets of \$337 million and cash of \$12 million in the nation of Chile, the requirement is an unnecessary administrative burden. We believe a telecommunications company doing business in California must evidence its financial responsibility by having a modest amount on deposit in this country. Thus, we retain the \$25,000 deposit requirement.

II. D.05-03-033 and the Petition for Modification

In D.05-03-033, we allowed Almendral to acquire indirect control of Americatel pursuant to Pub. Util. Code § 854. Because Almendral is a Chilean company headquartered in that country, we imposed a modest \$25,000 deposit requirement to ensure that Almendral demonstrated its financial responsibility in the U.S.:

As a condition of the granting of this application, within 30 days of the effective date of this decision, Almendral shall furnish paperwork to the Administrative Law Judge and the Commission's Telecommunications division, 505 Van Ness Avenue, 3rd Floor, San Francisco, Ca 94102 (Attention: Joseph McIlvain) certifying that it has deposited – or already has on deposit – at least \$25,000 in a FDIC – insured U.S. bank account.

In the Petition for Modification, petitioners assert that because of their extensive cash and assets in Chile, Almendral should be excused from this modest requirement. They cite administrative burden:

Although the amount of the required deposit is not substantial, the obligation for Almendral, a Chilean corporation, to establish a U.S. bank account and maintain the deposit balance is, nevertheless, an administrative burden.

Petitioners also assert that because Almendral has significant assets in Chile, the deposit requirement is unnecessary.

III. Discussion

As petitioners acknowledge in their Petition for Modification, we impose the \$25,000 deposit requirement to ensure that a company acquiring control of a telecommunications company doing business in California make a modest showing of financial viability in the U.S.¹ The Commission imposes this requirement to ensure that if the U.S. company collects ratepayer funds, and then goes out of business, there are reachable funds on deposit from which to secure refunds, as well as payment of its obligations to creditors and employees.

¹ See D.91-10-041 (imposing financial obligation) and D.93-05-010 (modifying obligation to \$25,000).

We are not persuaded by Almendral's assertion of burden. If it wishes to acquire a company doing business in California, it is not too much to ask to require that it demonstrate minimal financial wherewithal in the U.S. Almendral nowhere asserts that this Commission or the U.S. courts could access the company's Chilean cash and assets if it were to default on any obligations.

We have discretion to impose conditions on an applicant seeking a transfer of control under Pub. Util. Code § 854. Almendral has not shown that the modest condition D.05-03-033 imposed is unduly burdensome or financially unnecessary.

We therefore deny the petition for modification.

IV. Comments on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____.

V. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Sarah R. Thomas is the assigned ALJ in this proceeding.

Findings of Fact

1. In. D.05-03-033, the Commission imposed the following condition on Almendral:

As a condition of the granting of this application, within 30 days of the effective date of this decision, Almendral shall furnish paperwork to the Administrative Law Judge and the Commission's Telecommunications division, 505 Van Ness Avenue, 3rd Floor, San Francisco, Ca 94102 (Attention: Joseph McIlvain) certifying that it has deposited – or already has on deposit – at least \$25,000 in a FDIC – insured U.S. bank account.

2. Almendral asserts that the condition is burdensome and unnecessary.
3. Almendral's cash and assets are located in the nation of Chile.

Conclusions of Law

1. The Commission has the authority pursuant to Pub. Util. Code § 854 to take such action, as a condition of a transfer, as the public interest may require.
2. It is in the public interest to require Almendral to have modest funds on deposits in the U.S. to ensure its financial responsibility in the event of default.
3. The Petition for Modification should be denied.

O R D E R

IT IS ORDERED that:

1. The Petition for Modification of Decision 05-03-033 filed by Americatel Corporation and Almendral, S.A. (Almendral) is denied.
2. Within 30 days of the effective date of this decision, Almendral shall file and serve on the Administrative Law Judge for this proceeding and the Commission's Telecommunications Division, 505 Van Ness Avenue, 3rd Floor, San Francisco, CA 94102 (Attention: Joseph McIlvain) documentation certifying that Almendral has deposited – or already has on deposit – at least \$25,000 in a FDIC – insured United States bank account.
3. Application 05-01-030 is closed.

This order is effective today.

Dated _____, at San Francisco, California.